

C O P Y in opinion

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1954

November 4

Mr. Stuart B. Wilkins
Director, Division of Finance
Department of Health
17 Capital Street
Concord, New Hampshire

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CONCORD, N.H.

Dear Sir:

You have referred to this office for
an opinion on the following:

On October 29, 1954 the Governor and Council authorized the transfer of \$5,759.65 of lapsed funds of the Department of Health to account C4331G, Rehabilitation of Crippled Children, subject to the approval of the Attorney General.

It is my opinion that such a transfer would be improper as by its own terms it attempts to transfer funds which have lapsed. R.L. c. 22, s. 29 provides by the last sentence thereof that "Except as otherwise specially provided, all unexpended portions of general appropriations which have not been expended during the fiscal year for which they were appropriated shall lapse at the end of thirty days after the expiration of the year." The funds sought to be transferred are portions of your department's general appropriation and unless specially provided, lapsed thirty days after the end of the last fiscal year and have become a portion of the general fund not subject to transfer to your account C4331G.

This opinion recognizes the usual administrative procedure whereby reserves are set up during the month of July for payables incurred during the past fiscal year which for some reason cannot be paid prior to the lapsing of the appropriation, and are then carried over to the next fiscal year. However, even though payments may thus be made well after the end of the fiscal year the source of the funds, the reserves for accounts payables, was set up prior to the lapsing of the general appropriations. It is apparent that the purpose of these reserves is to prevent lapsing and continue the availability of funds for proper expenditures. In the present matter, such a reserve was not established and the availability of these funds is not now present.

Mr. Stuart B. Wilkins

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The fact that such steps were not taken because of the inability to determine prior to the end of July the amount of unexpended portions of the general appropriation of your department and consequently a specific amount could not then be transferred to account 043310 and reserve set up possibly points up an inadequacy of the time element of R.L. c. 22, s. 29.

This section as now enacted is specific in its terms and all unexpended portions of general appropriations, unless specially provided, lapse after 30 days from the end of the fiscal year and are unavailable for expenditure or transfer unless lapsing has been prevented by the establishment of reserves or funds have so been committed as to remove them from operation of the section. See letter of Maurice M. Blodgett, Deputy Attorney General to Arthur Bean, August 1, 1952. There has been no such commitment here as prior to the end of July it was not known how much, if any, funds remained which could have been then transferred and committed and there was, in fact, no such transfer and commitment.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD/T

cc: Governor Gregg
Arthur Bean, Comptroller